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March 24, 1999

HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Presentations
WT Dkt. No. 97-82; DA 99-332

Dear Ms. Salas:

This letter is to notify you that Mark Tauber and I met yesterday with Daniel Connors, Legal Advisor to Commissioner Ness, to discuss Omnipoint Corporation's March 15 "Application for Review" concerning bid credits and participation in the upcoming Block C re-auction. The attached bullet-sheet, which was provided to Mr. Connors, summarizes Omnipoint's position. In addition, we discussed with Mr. Connors the importance of bid credits and Omnipoint's ability to fill in the GSM national footprint. We also met yesterday with Paul Misener, Legal Advisor to Commissioner Furchtgott-Roth, and a legal intern from Commissioner Furchtgott-Roth's office, to discuss the "Application for Review." A copy of the attached bullet-sheet, summarizing Omnipoint's position, was distributed during that meeting, as well.

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Magalie Roman Salas
March 24, 1999
Page 2

Please find attached three copies of this letter for inclusion in the above-referenced docket. Should you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark J. O'Connor", with a stylized flourish at the end.

Mark J. O'Connor
Counsel for Omnipoint Corporation

cc: Daniel Conners, Esq.
Paul Misener, Esq.

Omnipoint -- Block C Re-Auction Bid Waiver Request

- **All Other Significant Bidders (i.e., more than \$10 million upfront payment) In the Re-Auction, Except Omnipoint, Have A 25% Bid Discount.**
- **Omnipoint Is Denied The Same Bid Credit As Other Significant Bidders Only Because It Grew As An Entrepreneur.**
- **Absent the Delay of FCC's Block C Restructuring, Omnipoint Would Have Been Eligible For the Largest Bid Credit.**
- **Fairness Principle of Restructuring Orders Compels That FCC Allow Omnipoint To Participate With The Same Bid Credit As Other Significant Bidders.**

Omnipoint's Waiver Is Supported By The FCC's Objectives For Small Business Growth in PCS

- **FCC's Rules Encourage Small Business Growth**

- FCC's objectives are to :
 - "encourage[] designated entities to grow, instead of penalizing them for success" (Fifth MO&O ¶ 125);
 - "increase likelihood that designated entities who win licenses in the auctions become strong competitor" (Fifth R&O, ¶ 98);
 - ensure that Block C Restructuring achieves "the statutory goal set forth in Section 309(j) that encourage[s] the rapid provision of service to the public." (Second R&O, ¶ 57).
- Section 24.709(a)(2) allows small businesses to maintain eligibility even as post-auction revenues rise due to "operations or other investments, business development or expanded service."
- PCS Transfer/Assignment rule, Section 24.839(d), likewise allows existing Block C licensees to qualify for additional licenses despite growth from PCS operations.

- **Unjust Enrichment Provisions Support Small Business Growth**

- FCC has already clarified that unjust enrichment rules do not apply to licensee that qualified for full bid credit in the initial Block C auction. Fifth MO&O, ¶ 126.
- Unjust Enrichment, like all Entrepreneur Band rules, should work to *promote* small business participation and *not limit* small business growth. Omnipoint never suggested a "grandfathering exception."
- Part I Third R&O is fully consistent with the PCS unjust enrichment provision.

Special Circumstances Justify A Waiver In This Case

Omnipoint's Status Is a Consequence of the Delay From FCC's Restructuring Process

- Without FCC intervention, default and re-auction would have occurred in 1996 or 1997, and Omnipoint would have had full bid credit.
- During delay, Omnipoint met FCC's mandate for service rollout -- only Block C operator in a top 25 American city (Philadelphia); Block F operator in Miami.
- Omnipoint should not be penalized for aggressive build-out.

Omnipoint is Uniquely Disadvantaged by in Auction #22 by the Fourth R&O decision

- No Other Block C Auction Winner has grown in revenues to be impacted by order as Omnipoint.
- All significant bidders except Omnipoint have a 25% bid discount, even though such bidders have access to enormous capital via passive investor "partners".

Re-Auction is the "Final Act" of the Restructuring Process, and the Promise to Treat Operational Licensees Fairly Must Now Be Met.